

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL CONTI,

Plaintiff,

v.

CORPORATE SERVICES GROUP, INC.,
et al.,

Defendants.

CASE NO. C12-245RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on the parties' motions in limine. Dkt. ## 107, 110. The court GRANTS both motions in part and DENIES them in part. The parties have divided their motions into several parts (34 parts, to be precise, not counting many subparts). The court will issue a separate order as to the part of Defendants' motion regarding evidence from the Equal Employment Opportunity Commission ("EEOC").

The court acknowledges that Plaintiff Michael Conti and Defendant Derek Anderson have stipulated to the dismissal with prejudice of all claims Mr. Conti made against Mr. Anderson. Dkt. # 102. The clerk shall TERMINATE Mr. Anderson as a party. Corporate Services Group, Inc. ("CSG"), Stacey Gardner, and Jay Leon are the sole remaining Defendants.

The court also GRANTS the parties' stipulated motion in limine. Dkt. # 106. The parties have agreed to exclude four categories of evidence: evidence of the parties'

1 settlement discussions, evidence that Mr. Conti moved to the United States to escape
2 guerilla warfare in Colombia, evidence regarding Mr. Conti's wife's employment, and
3 evidence of Mr. Conti's wife's English language skills. The court accepts their
4 agreement and will require them to abide by it. The motion also reveals the parties'
5 agreement to exclude all witnesses from the courtroom except during their testimony.
6 The court's standard practice is to permit a witness to attend trial once the court has
7 excused him or her (*i.e.*, once the witness has completed his or her testimony and the
8 parties have agreed that the witness is not subject to recall). If the parties have a reason
9 for departing from this practice, they shall explain it to the court at the pretrial
10 conference.

11 Before addressing each part of the parties' disputed motions, the court makes two
12 preliminary comments. First, the parties will have six days to select a jury, complete
13 opening statements and closing arguments, and present evidence. The court will be
14 presiding over another trial beginning on December 10. The jury may continue to
15 deliberate on December 10 and thereafter, but the parties will complete their presentation
16 of this case to the jury no later than 4:30 p.m. on December 9. Throughout discovery,
17 dispositive motions, and now these pretrial motions, the parties have demonstrated an
18 extraordinary willingness to raise disputes about virtually everything, from the substantial
19 to the trivial, that might possibly be at issue in this case. If the parties were actually to
20 raise at trial every factual dispute they raised in their dispositive motions and other
21 pretrial motions as well as these motions in limine, trial would take months. But the
22 parties will have six trial days, split evenly between them. They should plan their
23 presentation of evidence accordingly.

24 Second, Mr. Conti often misinterprets the court's orders on the parties' dispositive
25 motions, especially the court's May 24 order denying virtually every portion of the
26 parties' motions for summary judgment ("SJ Ord.," Dkt. # 81). A party's burden in

opposing a summary judgment motion is simply to present evidence that creates a genuine issue of material fact preventing the court from issuing judgment as a matter of law. A party seeking summary judgment need only offer enough evidence or argument to show the absence of a genuine issue, thus obligating the opposing party to present evidence. No party is obligated to come forward with every piece of evidence relevant to a particular issue. There are numerous instances in which the court noted that one party or the other had presented “no evidence” of a particular fact. For example, in ruling that a jury could find Defendants’ explanation for demoting Mr. Conti to be pretextual, the court observed that “there [was] not a shred of evidence that anyone at CSG had concerns about [Mr. Conti’s] English skills prior to June 29.” SJ Ord. at 8. The court did not rule that Defendants had no evidence of earlier concerns about Mr. Conti’s English, it merely ruled that they had not presented any such evidence in support of their summary judgment motion. No one asked for partial summary judgment that there was no evidence of Defendants’ dissatisfaction with Mr. Conti’s English skills prior to June 29, 2010, and thus Defendants were not obligated to come forward with evidence to avoid summary judgment on that ground. Unless a party’s failure to present evidence results in summary judgment on an issue, a party is free (barring a separate reason for exclusion) to rely on evidence at trial that was not in the summary judgment record.

II. PLAINTIFF’S MOTION IN LIMINE

A. Mr. Conti’s Termination

Mr. Conti asks the court to exclude evidence or argument that Mr. Conti resigned, as opposed to evidence that Defendants fired him. The court noted in its summary judgment order that Defendants’ insistence that Mr. Conti resigned is curious in light of the email they sent explicitly terminating him. At the time, the court noted that it was “aware of no evidence that would permit the jury to conclude that Mr. Conti resigned” SJ Order at 15 n.6. Now, Defendants have offered evidence that Mr.

1 Conti claimed that he claimed he “quit” when he applied for unemployment benefits. In
2 addition, the EEOC determination that is the subject of a separate order summarizes Mr.
3 Conti’s complaint by stating that he was “compelled to resign his position” That
4 evidence was not before the court previously, and Defendants were not obligated to
5 provide it. As the court noted in the prior order, Mr. Conti did not make it clear whether
6 he sought summary judgment that he was fired rather than that he resigned or was
7 constructively discharged. SJ Ord. at 15 n.6. The court will not preclude Defendants
8 from offering evidence or argument that Mr. Conti resigned, nor will it rule out the
9 possibility that it will be necessary to instruct the jury on the theory of constructive
10 discharge.

11 **B. Mr. Conti’s Failure to Accept a Job on Defendants’ “Outbound” Team is Not**
12 **Evidence of His Failure to Mitigate Damages.**

13 For the reasons stated in the summary judgment order, Defendants may not argue
14 that Mr. Conti’s failure to accept the lower-paying job on CSG’s “Outbound” team is a
15 failure to mitigate damages. Defendants agree that they will not do so, and opposed this
16 portion of Mr. Conti’s motion solely to preserve whatever right they have to appeal the
17 court’s summary judgment ruling.

18 If necessary, the court will instruct the jury that Mr. Conti’s refusal to accept the
19 “Outbound” job is not a failure to mitigate damages.

20 **C. “Undisclosed” Evidence and Arguments**

21 Mr. Conti asks the court to exclude any evidence or witnesses that Defendants did
22 not disclose during discovery. He pinpoints no evidence and identifies no witnesses. The
23 court denies this part of his motion for that reason. Mr. Conti is free to object at trial if
24 Defendants attempt to introduce evidence or witnesses that they were obliged to disclose
25 in discovery but did not, but Mr. Conti offers no support for the broad ruling he requests.
26 Moreover, it appears that the parties have yet to agree on what Plaintiffs did or did not
27 produce during discovery. The court urges them to resolve these issues before trial

1 begins. Neither party will be served by wasting trial time with arguments over the past
2 production of evidence.

3 Similarly, Mr. Conti is free to object if Defendants attempt to rely on arguments
4 supporting affirmative defenses that they did not disclose in response to proper
5 contention interrogatories. There is again, however, no basis for the broad ruling Mr.
6 Conti requests.

7 The court also denies Mr. Conti's request that the court strike Defendants'
8 affirmative defenses. The deadline for dispositive motions expired long ago. The only
9 ruling the court has made regarding Defendants' affirmative defenses is that they may not
10 argue that Mr. Conti failed to mitigate damages by failing to accept the "Outbound" job.

11 **D. Decisionmakers as to Mr. Conti's Transfer and Pay Cut**

12 The court denies this part of the motion. A jury will decide who made the
13 decision to move Mr. Conti to a different position with lower pay.

14 Several parts of Mr. Conti's motion ask the court to limit who Defendants may
15 claim were decisionmakers with respect to adverse actions against him. The court will
16 deny those requests for the most part, but the court questions whether the parties have an
17 actual dispute on this issue. Defendants seem largely to agree with Mr. Conti about who
18 was responsible for making decisions about him; they merely wish to present evidence
19 that the people ultimately responsible took into account input from other people. The
20 court will not prevent them from doing so.

21 **E. Reasons for Mr. Conti's Termination**

22 As the court has already noted, if Defendants failed to disclose either a specific
23 piece of evidence or a specific legal argument in response to a discovery request calling
24 for that evidence or argument, Mr. Conti may object at trial. In this portion of his
25 motion, Mr. Conti points to no specific evidence or argument. There is no basis for an
26 advance ruling limiting what evidence or argument Defendants may offer regarding their

1 reasons for firing Mr. Conti. They were not obligated to present all evidence regarding
2 their reasons for firing Mr. Conti during summary judgment. If Mr. Conti can point to a
3 specific discovery response in which Defendants limited their reasons for terminating Mr.
4 Conti, he can point that out at trial.

5 **F. Decisionmakers as to Mr. Conti's Termination**

6 The court denies this part of the motion. A jury will decide who made the
7 decision to fire Mr. Conti.

8 **G. Ms. Gardner as a Decisionmaker**

9 The court granted summary judgment in Ms. Gardner's favor on Mr. Conti's
10 retaliation claim because there was no evidence that Ms. Gardner knew of the alleged
11 protected activity (Mr. Conti's threat to file an EEOC complaint) that was the basis of
12 that claim. Dkt. # 82 at 5. An additional independent basis for that ruling was that there
13 was no evidence that Ms. Gardner had any role in terminating Mr. Conti. Defendants
14 may not offer evidence or argument to the contrary at trial. Defendants may, however,
15 argue that Ms. Gardner's earlier evaluations of Mr. Conti played a role in other people's
16 decision to terminate him.

17 **H. Microsoft's Role**

18 The court denies this part of the motion. A jury may decide to what extent the
19 input of Microsoft employees played a role in Defendants' adverse actions against Mr.
20 Conti. The court also declines to exclude an email that Microsoft employee John
21 Schoenstein sent two months after Defendants fired Mr. Conti. If, as Mr. Conti contends,
22 that email is merely an after-the-fact summary of Mr. Schoenstein's understanding of
23 why Mr. Conti is fired, the court expects that Mr. Conti will be able to demonstrate as
24 much at trial.

I. Decisionmakers as to Hiring Mr. Conti

The court denies this part of the motion. A jury will decide who made the decision to hire Mr. Conti and who made decisions about his initial rate of pay and job assignments.

J. Evidence From Analyn Bonifacio Regarding Her Meetings with Mr. Conti in Late June 2010.

Mr. Conti intends to prove his retaliation claim in part by claiming that he threatened, during a June 29 meeting where Analyn Bonifacio and Ashlie Young told him that he was being demoted, to file a complaint of discrimination with the EEOC. When Mr. Conti took Ms. Bonifacio's deposition, his counsel asked her a series of questions about this meeting. Eventually, counsel asked: "[Mr. Conti] told you . . . that this was discrimination and that he was going to go to the EEOC, didn't he?" In the videotape of the deposition, Ms. Bonifacio plainly answered "Yes" to this question.¹ Just as she finished that response, her counsel stated: "Objection. What time frame are we on right now?" This exchange followed:

Mr. Conti's counsel: We're at the meeting.

Ms. Bonifacio's counsel: Which meeting?

Mr. Conti's counsel: What other meeting are we talking about right now, counsel? Just let me ask my questions.

Ms. Bonifacio's counsel: Vague as to which meeting you're talking about.

Mr. Conti's counsel: You understand what meeting we're talking about, right?

Ms. Bonifacio: No, there's two meetings. There was over the phone.

¹ The transcript of the deposition does not reflect Ms. Bonifacio's "yes" answer. Mr. Conti was apparently unaware of the "yes" answer when he filed his motion in limine. Ten days later, counsel filed a declaration (not a motion) requesting that the court "correct" the transcript based on the difference between the video and the transcript. Counsel deposed Ms. Bonifacio in January 2013, drafted a motion in limine based on a line-by-line recount of the transcript 11 months later, and declined to review the video until 10 days after that. If counsel believes that the court will order the transcript "corrected" based on a late-filed declaration that reveals no effort to discuss the issue with opposing counsel, he is mistaken. The video is presumptively admissible at trial, as is the written transcript. That will suffice to correct any error.

1 Bonifacio Dep. at 87. That exchange led to testimony in which Ms. Bonifacio claimed
2 that in her initial meeting with Mr. Conti, he had not mentioned discrimination or
3 threatened to file a charge with the EEOC. She then testified that his initial threat of
4 discrimination came later during a telephone conversation with her. Ms. Bonifacio had
5 no recollection (at least in the excerpts counsel provided) of what day either the meeting
6 or the phone conversation took place.

7 Mr. Conti insists that Ms. Bonifacio changed her testimony because of her
8 counsel's suggestive objection. That is possible. It is also possible that Mr. Conti's
9 counsel was vague as to the timing of her conversation with Mr. Conti where he first
10 mentioned the EEOC or a discrimination claim. The transcript alone does not provide an
11 unequivocal answer. If Mr. Conti wishes to convince the jury that Ms. Bonifacio
12 changed her testimony in response to her counsel's coaching, he may do so. The court
13 will not make that determination for him.

14 Mr. Conti goes even further, requesting that the court exclude her "coached
15 testimony" and prohibit Defendants from introducing evidence or argument that Mr.
16 Conti's initial mention of discrimination came after his first meeting with Ms. Bonifacio.
17 The court will not do so. The record permits more than one conclusion about when Mr.
18 Conti first mentioned discrimination or the EEOC, and the court will not prohibit the jury
19 from hearing evidence relevant to that issue. The jury will decide when Mr. Conti first
20 mentioned discrimination or threatened to file an EEOC charge.

21 **K. CSG's Fed. R. Civ. P. 30(b)(6) Deposition**

22 If Mr. Conti believed that Jay Leon provided inadequate answers as CSG's Rule
23 30(b)(6) deponent, he should have filed a motion to compel.² Mr. Conti is free to use the
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25 ² Mr. Conti suggests that Mr. Leon gave evasive or inadequate answers because he knew that the
26 deadline to file discovery motions had passed. The court suggests no opinion on that accusation,
27 although it observes that no one requested an extension of any motion deadline. Mr. Conti is
28 responsible for his choice to depose Mr. Leon when it was too late to file discovery motions.

1 deposition transcript to impeach Mr. Leon or any other CSG representative, but the court
2 will grant no relief stemming from Mr. Leon's allegedly inadequate answers.

3 **L. Evidence of Financial Impact of Adverse Judgment on Defendants**

4 The court will address this part of Mr. Conti's motion when it addresses
5 Defendants' motion to bifurcate the trial. *See infra* Part III.13.

6 The court observes, however, that both in opposition to this motion and elsewhere
7 in the briefing before the court, Defendants announce that CSG has "no insurance
8 coverage," and complain that Mr. Conti's counsel intends to seek a large attorney fee
9 award if Mr. Conti prevails. This is a dubious attempt at persuasion when directed at the
10 court, but it would be flatly impermissible if directed at the jury. Unless they first receive
11 explicit permission from the court, the court prohibits Defendants from mentioning their
12 own liability insurance (or lack thereof) or the possibility of an attorney award.
13 Defendants shall instruct their witnesses accordingly.

14 **M. Mr. Conti's Prior Bad Acts**

15 Mr. Conti asks the court to exclude all evidence of his prior "bad acts," as well as
16 evidence of the bad acts of his witnesses. He does not identify a single bad act, leaving
17 the court with nothing specific to exclude. The court denies this part of his motion,
18 without prejudice to objections at trial that target specific evidence of prior bad acts.

19 **N. Evidence Designed to Elicit Sympathy for Defendants**

20 Mr. Conti asks the court to prevent Defendants from offering testimony about their
21 emotional distress as a result of this suit and to prevent them from testifying about their
22 personal lives. It is not uncommon for a witness to testify briefly regarding his or her
23 background, including aspects of his or her personal life that are not strictly relevant to
24 any issue before the jury. Similarly, a witness's answers will occasionally reveal his or
25 her own feelings about being involved in a heated dispute. Any party may object if such
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1 testimony goes too far afield, but Mr. Conti has presented no reason for the court to
2 wholly exclude it.

3 **O. Mr. Conti's Medical Records**

4 The court will address this portion of Mr. Conti's motion when it addresses
5 Defendants' motion to exclude evidence of Mr. Conti's emotional distress. *See infra* Part
6 III.2.

7 **P. Evidence of Mr. Conti's Collateral Sources of Income**

8 Defendants may not offer evidence or argument regarding the amount Mr. Conti
9 received in unemployment benefits after they fired him, nor may they offer evidence
10 about the amount of any other collateral source of income. The court will not preclude
11 Defendants from offering evidence as to statements Mr. Conti made when applying for
12 unemployment benefits. Depending on the evidence at trial, and depending on whether
13 the court takes damage verdicts (advisory or otherwise) from the jury, the court may
14 instruct the jury that Mr. Conti's collateral income is not relevant to their verdicts. This
15 ruling does not limit Defendants' right to file proper post-verdict briefing regarding
16 whether any award to Mr. Conti should be offset because of collateral income he
17 received.

18 **Q. Immigration Status**

19 There is no way to conduct a trial on Mr. Conti's claims of national origin
20 discrimination without entering evidence as to Mr. Conti's national origin and the
21 national origin of his comparators at CSG. Among those comparators is Mr. Conti's
22 daughter, Tiffany Baustert. Ms. Baustert was born in the United States, and her parents
23 apparently took her to Colombia shortly thereafter. If the summary judgment motions
24 were any indication, Ms. Baustert's upbringing may be relevant at trial because it may
25 explain why she speaks unaccented English whereas her father does not. The court will
26 not preclude that evidence. It cautions Defendants, however, that if they in any way

1 suggest Mr. Conti and his wife acted improperly by coming to the United States to give
2 birth to Ms. Baustert or their second daughter, the court will impose monetary sanctions
3 and will consider entering default against them.

4 The court urges the parties to confer to determine if they can reach a stipulation
5 that will ensure that the jury receives relevant information about Ms. Baustert's origin
6 and language acquisition in a manner that poses no risk of prejudice.

7 **R. Mr. Conti's Salary or Wages at Past Jobs**

8 Unless Defendants receive the court's explicit permission, they may not introduce
9 evidence of Mr. Conti's pay at jobs prior to his work at CSG. That evidence is likely
10 irrelevant to any issue before the jury. That Mr. Conti may have been paid less before he
11 worked at CSG has no obvious bearing on either front pay or back pay following his
12 termination. The court will not preclude Defendants from making an offer of proof
13 outside the presence of the jury, but they will have to make a substantially better showing
14 as to the relevance of Mr. Conti's prior wages or salary.

15 **S. Sibling Relationship Between Defendant Jay Leon and Defense Counsel
16 Catherine Leon**

17 The court finds no reason to inform the jury that Mr. Leon and Ms. Leon are
18 siblings, and accordingly grants this part of Mr. Conti's motion in limine.

19 **T. Mr. Conti's Comparators**

20 The court denies the final part of Mr. Conti's motion, which seeks an affirmative
21 ruling that he may introduce evidence regarding his peers at CSG. He does not specify
22 what evidence he wishes to admit and he does not convince the court that there is any
23 reason to make an advance ruling.

24 **III. DEFENDANTS' MOTION IN LIMINE**

25 **1. Mr. Conti's Failure to Preserve Evidence Relevant to Mitigation of Damages**

26 Defendants contend that Mr. Conti has not preserved all evidence of his efforts to
27 seek other employment, and that the court should therefore preclude him from requesting
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1 damages. The court disagrees. If Mr. Conti lacks evidence to substantiate claims that he
2 has made reasonable attempts to find comparable employment since CSG fired him, CSG
3 will be able to point that out when it examines Mr. Conti.

4 **2. Mr. Conti's Emotional Distress Damages**

5 Mr. Conti apparently refused to respond substantively to discovery requests about
6 his medical treatment, including mental health treatment. Defendants, for their part, did
7 not move to compel responses. The court therefore need not decide if Mr. Conti's
8 discovery responses properly invoked any privilege protecting communications between
9 health care providers and their patients. Defendants will not use trial to litigate a dispute
10 that they should have raised before the close of discovery.

11 Even if a privilege applies, nothing prevents Defendants from asking if Mr. Conti
12 received medical treatment for any distress he experienced as a result of his dispute with
13 CSG. Defendants may also explore whether Mr. Conti experienced other stressors
14 (including health-related stressors) that might have contributed to his emotional distress.
15 The court doubts it will be necessary to inquire into the content of communications
16 between Mr. Conti and any medical provider. If Defendants demonstrate otherwise, the
17 court will determine if any privilege protects those communications.

18 This ruling also disposes of Part O of Mr. Conti's motion in limine, in which he
19 asks the court to exclude evidence of his medical history. To the extent he suggests that
20 *all* evidence about his health or health care is protected by a privilege, he is mistaken. To
21 the extent that evidence about his health or health care is relevant, Defendants may
22 introduce it at trial. Again, the court has no reason to expect that it will be necessary to
23 inquire into Mr. Conti's communications with medical providers, which are arguably
24 privileged. The court will rule on the applicability of a privilege only if necessary.

1 **3. No Need for Expert Testimony as to Front Pay or Lost Benefits**

2 There is no requirement that Mr. Conti support any request for front pay or lost
3 benefits with expert testimony. If Mr. Conti or another witness attempts to offer
4 testimony beyond the ken of a lay witness as to his damages, Defendants may object.

5 **4. Mr. Conti's Eviction**

6 Before Mr. Conti may present evidence about his eviction from his rental housing,
7 he must make an offer of proof. That offer of proof must convince the court that there is
8 a basis for a jury to conclude that Defendants' actions caused Mr. Conti's eviction. If
9 there is, then Mr. Conti may present evidence of the eviction to support his damage
10 claim.

11 **5. Mr. Conti's Coworker's Opinions of His and His Comparators' Job Performance**

12 The court will not prevent Mr. Conti from presenting otherwise admissible
13 evidence regarding his coworkers' opinions of his job performance or of the job
14 performance of his comparators. There is no reason for the court to conclude that those
15 opinions are beyond the scope of permissible opinion testimony from a lay witness, any
16 more than the court could conclude that Mr. Conti's supervisors' opinions of his and his
17 comparators' performance were impermissible opinion testimony.

18 **6. Evidence that CSG Disciplined Mr. Conti's Comparators**

19 The court will not bar Mr. Conti from presenting evidence that his comparators at
20 CSG were disciplined. That evidence is at least arguably relevant to Mr. Conti's
21 contention that he was treated less favorably than his comparators despite his better job
22 performance. Defendants offer nothing from which the court could conclude that this
23 evidence is unfairly prejudicial or otherwise inadmissible despite its relevance.

24 Defendants repeat an unsuccessful argument from their summary judgment
25 motions: that this case is different than a typical discrimination case because CSG
26 eliminated Mr. Conti's position as part of a reorganization of the business. Defendants

1 are free to argue at trial that their decision to demote Mr. Conti was dictated by business
2 needs, but Mr. Conti is free to argue that they chose to demote him rather than others for
3 discriminatory reasons. For that reason, he is free to offer admissible evidence to show
4 that others at CSG who were less qualified (or who had received discipline) were treated
5 more favorably.

6 **7. Evidence Regarding CSG's Indemnification of the Individual Defendants**

7 The court denies Defendants' request to exclude evidence or argument that CSG
8 has agreed to pay any individual Defendant's litigation costs or adverse judgment. This
9 request seems most relevant to Ms. Gardner, who is no longer a CSG employee. If CSG
10 has provided her with a defense or agreed to pay an adverse judgment, that is probative of
11 her potential bias. If she testifies, the court will permit Mr. Conti to ask her a few yes-or-
12 no questions about whether CSG has agreed to pay her litigation costs and whether CSG
13 asked for anything from her in exchange for that agreement. Unless her answers to those
14 questions suggestion a reason for a more detailed inquiry, Mr. Conti may ask no more
15 questions.

16 **8. Excluding Declarations from Evidence**

17 Defendants request that the court exclude all "evidence, testimony, argument, or
18 reference to any declarations by witnesses" The court cannot grant that request.
19 Defendants concede that anyone may use a witness's past declaration for impeachment,
20 and it would be difficult to do so without making a "reference" to the declaration. Mr.
21 Conti contends that he may also introduce the declarations into evidence to refresh a
22 witness's recollection or via the exception for recorded recollections at Federal Rule of
23 Evidence 803(6). Material used to refresh recollection is never introduced into evidence
24 unless it is separately admissible. Mr. Conti makes no effort to demonstrate that any
25 declaration in this case falls within the scope of Rule 803(6). The court declines to make
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1 any advance ruling on the use of declarations. The Federal Rules of Evidence apply, and
2 the court will apply them on a proper objection from any party.

3 **9. References to Court's Prior Orders**

4 Unless the court gives express permission, no party will refer to any of the court's
5 pretrial rulings in front of the jury.

6 **10. Race Discrimination Claim**

7 The parties are still, on the eve of trial, unable to reach agreement on whether Mr.
8 Conti is actually pursuing a claim of race discrimination. As the court noted in its
9 summary judgment order, it can be difficult to distinguish racial discrimination from
10 national origin discrimination. SJ Ord. at 11-12. To complicate matters further, Title VII
11 expressly forbids discrimination both on the basis of race and on the basis of national
12 origin, whereas 42 U.S.C. § 1981, which Mr. Conti has also invoked, expressly applies
13 only to race. *Id.* at 11. Courts have, however, construed § 1981 to apply to national
14 origin as well. *Id.* The court will not artificially separate the related concepts of racial
15 and national origin discrimination. If Defendants wished to eliminate race discrimination
16 (as opposed to national origin discrimination) from this case, they should have sought
17 summary judgment on that issue long ago.

18 **11. Evidence Regarding CSG's 2013 Sale of Its Call Center Business**

19 As the court understands it, CSG sold or transferred its call center business to
20 another entity earlier this year. Defendants ask the court to preclude evidence of that
21 transaction. That transaction occurred about three years after CSG fired Mr. Conti, and
22 would thus seem to have little relevance. The court has already rejected Mr. Conti's
23 request to amend his complaint to add a claim that CSG arranged the transaction to
24 protect itself from an adverse judgment. Mr. Conti will not elicit testimony regarding the
25 reasons for that transaction unless he receives the court's express permission. Similarly,
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1 he may not argue that CSG made that transaction to avoid an adverse judgment unless the
2 court grants him permission.

3 The court finds no reason to prohibit the parties from introducing evidence of that
4 transaction for other purposes. It seems a bad idea for the parties to waste jury resources
5 discussing a business transaction that came three years after CSG fired Mr. Conti, but the
6 parties may believe otherwise. Mr. Conti suggests that CSG wishes to argue that Mr.
7 Conti's front pay should be limited because the call center work he performed no longer
8 exists at CSG. If that is the case, he could present evidence that CSG's call center
9 employees continued in their jobs after the transaction. Again, the court cannot imagine
10 why the parties would spend any trial time presenting this evidence, but the court leaves
11 the choice to them.

12 **12. Evidence that Defendants Previously Had Different Lawyers**

13 The court will not prohibit evidence that Defendants used different lawyers in the
14 early stages of this dispute. If nothing else, it is possible that one or more witnesses may
15 mention previous counsel in passing. Mr. Conti suggests that he may inquire into the
16 issue because CSG shared its prior counsel with Microsoft, which is somehow indicative
17 of collusion. This seems far-fetched, to say the least, but again, the court finds no reason
18 to prohibit Mr. Conti from using his limited trial time to explore this issue. Defendants
19 have not identified any particular prejudice that they would suffer if the jury learns that
20 they previously used different lawyers.

21 **13. Limited Bifurcation to Assess the Amount of Punitive Damages**

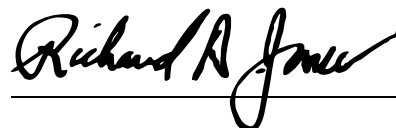
22 The court will, if necessary, conduct a separate phase of the trial to determine a
23 punitive damages award. In the verdict form that the jury will receive at the end of the
24 first phase of trial (which will resolve every jury issue except the amount of punitive
25 damages), the jury will be asked (in the event they find in Mr. Conti's favor on a claim
26 for which punitive damages are available) whether Mr. Conti has met the applicable

1 standard for punitive damages as to each Defendant. If the jury's answer is yes, the court
2 will immediately began a second phase of the trial, with the same jury, where Mr. Conti
3 will present evidence to justify a particular punitive damage award. At that time, and
4 only at that time, may Mr. Conti call witnesses or present evidence regarding the
5 financial status of any Defendant. The second phase may also present an opportunity to
6 present evidence regarding Defendants' conduct that would be irrelevant during the first
7 phase of the trial. The court imposes this limited bifurcation to avoid using jury time
8 during the first phase to discuss any Defendant's financial status or other issues that are
9 relevant only to a punitive damage award. No attorney or witness shall mention the
10 possibility of a second phase of trial, and no attorney or witness shall mention the
11 possibility of punitive damages until the second phase of trial, if it occurs.

12 IV. CONCLUSION

13 For the reasons stated above, the court GRANTS in part and DENIES in part the
14 parties' motions in limine. Dkt. ## 107, 110. The court GRANTS the parties' stipulated
15 motion in limine (Dkt. # 106), and dismisses Derek Anderson as a party in accordance
16 with his stipulation (Dkt. # 102) with Mr. Conti.

17 DATED this 20th day of November, 2013.

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21 The Honorable Richard A. Jones
22 United States District Court Judge
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